

The complaint

Ms G is unhappy that a car supplied to her under a conditional sale agreement with Close Brothers Limited, trading as Close Brothers Motor Finance, was of an unsatisfactory quality.

Ms G has been represented during the claim and complaint process by Mr R. For ease of reference, I will refer to any comments made, or any action taken, by either Ms G or Mr R as “Ms G” throughout the decision.

What happened

In January 2024, Ms G was supplied with a used car through a conditional sale agreement with Close Brothers. She paid an advance payment of £2,500 and the agreement was for 3,300 over 36 months; with 35 monthly payments of £120.27 and a final payment of £130.27. At the time of supply, the car was just over 13 years old, and had done around 50,000 miles.

Ms G said there were issues with the car from when it was supplied to her and, on 26 January 2024, she complained to Close Brothers. Close Brothers tried to arrange for the car to be inspected by an independent engineer, but this inspection didn't take place – due to an error the engineer initially came on the right day, but at the wrong time, and Ms G wasn't available, and Ms G refused to take time off work for another inspection. So, because there wasn't any evidence of a fault with the car, Close Brothers didn't uphold Ms G's complaint.

Ms G wasn't happy with what'd happened, and she brought her complaint to the Financial Ombudsman Service for investigation.

Our investigator said that there was no evidence of a fault with the car that was present or developing when it was supplied to Ms G. They also said that Ms G had been given the opportunity to have the car independently inspected but had declined to do so. So, the investigator said they wouldn't be asking Close Brothers to do anything more.

The investigator also explained that, although Ms G had raised a complaint about the car being mis-sold to her – it wasn't provided with a 12-month MOT, a service book, documentation for a 6-month warranty, or evidence of a recent service being carried out – there was no evidence that she'd raised these issues with Close Brothers. So, as our rules don't allow us to consider a complaint unless the financial business has had the opportunity to consider it first, this wasn't something we were able to investigate.

Ms G didn't agree with the investigator's opinion. She said the car wasn't as advertised at the point of sale, which she considered to be a mis-sale. She also said that she was unable to take any time off work to allow for the car to be independently inspected. Ms G also provided two breakdown reports, dated 5 December 2023 and 13 June 2024, indicating faults with the car.

Following this, Ms G had the car inspected by an independent garage. This inspection took place on 18 June 2024, at which point the car had done 50,355 miles. This inspection found a noise when changing gear, steering, and reversing. A broken suspension spring was also

found, as well as the engine management light (EML) being illuminated. Finally, there were error codes relating to the exhaust gas recirculation system and the pressure sensor circuit.

Based on this information, Close Brothers agreed that Ms G could reject the car. The investigator issued a second opinion, confirming that Close Brothers had accepted rejection, and stating what they thought should be done to put things right. Close Brothers accepted this, but Ms G didn't, as she didn't think the recommendations were sufficient to cover all her costs. So, this matter has been passed to me to decide.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Ms G was supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Close Brothers are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless Close Brothers can show otherwise. So, if I thought the car was faulty when Ms G took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Close Brothers to put this right.

In this instance, it's not disputed there was a problem with the car, nor that this fault was present when the car was supplied to Ms G. As such, I'm satisfied that I don't need to consider the merits of this issue within my decision. Close Brothers have accepted that Ms G has the right to reject the car. Ms G has raised the issue that the car was mis-sold to her. While this hasn't been looked into, were an investigation to have found the car was mis-sold, then allowing Ms G to reject the car would be a likely outcome. So, as rejection has already been offered by Close Brothers, I won't now be considering the mis-sale. Instead, I'll focus on what, if anything, I think Close Brothers should do to put things right.

Putting things right

Ms G hasn't been able to use the car while it was in her possession. This is evidenced by the fact she only did around 300 miles between being supplied with the car in January 2024,

and when it was independently inspected in June 2024. So, I think it's only fair that Close Brothers refund the deposit, and all the monthly payments Ms G has made.

The payment refund also compensates Ms G for any alternative transport costs she may have incurred while the car was off the road. I don't think it's fair that Close Brothers should refund these costs separately as doing so would essentially mean Ms G has been able to travel at no cost while she was in possession of the car, something that would not have been the case had the car been of a satisfactory quality when supplied. As such, a separate refund of these alternate transport costs would put Ms G into a position of betterment.

For clarity, it's my understanding that the cost of the independent inspection that took place in June 2024 remains outstanding. As this was only required because the car wasn't of a satisfactory quality when supplied, Close Brothers should also cover this cost – this is what the investigator meant when they recommended that Close Brothers should collect the car at no cost to Ms G.

Ms G also feels she should be refunded the cost of taxing and insuring the car, as well as the cost of the breakdown cover she took out in June 2024. However, I don't agree these costs should be refunded, and I'll explain why.

Although the car hasn't done much mileage while it's been in Ms G's possession, it has been driven on the road during this time. It's a legal requirement that a motor vehicle is both taxed and insured. This is needed whether the vehicle is being driven or not. The insurance covers the vehicle for risks not associated with being driven, i.e., fire, theft, and third-party damage, so Ms G was still benefitting from the insurance payments, whether she was driving the car or not. Regarding the road tax, if a motor vehicle is not being used and not being stored on a public highway, it can be declared as being off the road through a SORN. This mitigates the need to pay road tax, and this is something Ms G was able to do, either when she stopped using the car or when it went to the independent garage in June 2024 and remained there.

What's more, I've seen the breakdown report dated 13 June 2024. So, I'm satisfied that Ms G has benefitted from the cover she took out. As such, it wouldn't be fair to ask Close Brothers to cover the costs of this – especially as they were prepared to arrange for the car to be independently inspected to diagnose any faults, so a breakdown report wasn't needed to show this.

However, I do think that Ms G should be compensated for the distress and inconvenience she's been caused. But crucially, this compensation must be fair and reasonable to both parties, falling in line with our service's approach to awards of this nature, which is set out clearly on our website and so, is publicly available.

I note our investigator also recommended Close Brothers pay Ms G an additional £200 to recognise the distress and inconvenience she's been caused. And having considered this recommendation, I think it's a fair one that falls in line with our service's approach and what I would've directed, had it not already been put forward.

I also think this is significant enough to recognise the worry and upset Ms G would've felt by being provided with a car she didn't feel confident was roadworthy enough to drive far. And I think it also fairly reflects the fact that Close Brothers tried to arrange for the car to be independently inspected on more than one occasion but, after the first failed attempt at inspection, Ms G wouldn't agree to this. So, this is a payment I'm directing Close Brothers to make

Therefore, Close Brothers should:

- end the agreement with nothing more to pay;
- collect the car at no cost to Ms G;
- remove any adverse entries relating to this agreement from Ms G's credit file;
- refund the deposit Ms G paid (if any part of this deposit is made up of funds paid through a dealer contribution, Close Brothers is entitled to retain that proportion of the deposit);
- refund all the payments Ms G has made between being supplied with the car and the agreement ending;
- apply 8% simple yearly interest on the refunds, calculated from the date Ms G made the payments to the date of the refund[†]; and
- pay Ms G an additional £200 to compensate her for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

[†]If HM Revenue & Customs requires Close Brothers to take off tax from this interest, Close Brothers must give Ms G a certificate showing how much tax they've taken off if she asks for one.

My final decision

For the reasons explained, I uphold Ms G's complaint about Close Brothers Limited, trading as Close Brothers Motor Finance. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 22 November 2024.

Andrew Burford
Ombudsman